

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KASHARD BROWN,

Plaintiff,

v.

I. BACA, *et al.*,

Defendants.

Case No. 3:21-cv-00061-MMD-WGC

ORDER

This action began with a *pro se* civil rights complaint filed under 42 U.S.C. § 1983 by a prisoner incarcerated at the Warm Springs Correctional Center (“WSCC”). On January 28, 2021, this Court issued an order denying the Plaintiff’s application to proceed *in forma pauperis*, without prejudice, because the application was incomplete. (ECF No. 3 at 2.) The Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* or pay the full filing fee of \$402 on or before March 29, 2021. (*Id.* at 2-3.) The March 29, 2021 deadline has now expired, and Plaintiff has not filed a fully complete application to proceed *in forma pauperis*, paid the full \$402 filing fee, or otherwise responded to the Court’s order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint);

1 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to
 2 comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone*
 3 *v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure
 4 to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)
 5 (affirming dismissal for lack of prosecution and failure to comply with local rules).

6 In determining whether to dismiss an action for lack of prosecution, failure to obey
 7 a court order, or failure to comply with local rules, the Court must consider several factors:
 8 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to
 9 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 10 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
 11 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at
 12 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

13 Here, the Court finds that the first two factors, the public's interest in expeditiously
 14 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
 15 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
 16 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
 17 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*
 18 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring the
 19 disposition of cases on their merits—is greatly outweighed by the factors weighing in favor
 20 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
 21 the court's order will result in dismissal satisfies the “consideration of alternatives”
 22 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
 23 at 1424. The Court's order requiring Plaintiff to file a fully complete application to proceed
 24 *in forma pauperis* or pay the full \$402 filing fee on or before March 29, 2021 expressly
 25 stated: “IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete
 26 application to proceed *in forma pauperis* with all three documents or pay the full \$402
 27 filing fee for a civil action on or before March 29, 2021, this case will be subject to
 28 dismissal without prejudice for Plaintiff to refile the case with the Court, under a new case

1 number, when Plaintiff has all three documents needed to file a complete application to
2 proceed *in forma pauperis* or pays the the full \$402 filing fee.” (ECF No. 3 at 3.) Thus,
3 Plaintiff had adequate warning that dismissal would result from noncompliance with the
4 Court’s order to file a fully complete application to proceed *in forma pauperis* or pay the
5 full \$402 filing fee on or before March 29, 2021.

6 It is therefore ordered that this action is dismissed without prejudice based on
7 Plaintiff’s failure to file a fully complete application to proceed *in forma pauperis* or pay
8 the full \$402 filing fee in compliance with this Court’s order dated January 28, 2021. (ECF
9 No. 3.)

10 The Clerk of Court is directed to enter judgment accordingly and close this case.
11 No other documents may be filed in this now-closed case.

12 DATED THIS 6th Day of April 2021.

13
14 

15 _____
16 MIRANDA M. DU
17 CHIEF UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26
27
28